

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

1 SCOTT TROY COOK,

2 No. C 11-06581 YGR (PR)

3 Plaintiff,

4 **NOTICE REGARDING INABILITY TO**
5 **SERVE DEFENDANT D. VACQUEZ**

6 vs.

7 MATTHEW CATE, et al.,

8 Defendants.
9 _____ /10 Service has been ineffective on Defendant D. Vacquez. The Court has been informed that
11 the litigation coordinator at Pelican Bay State Prison ("PBSP") was "unable to identify a D. Vacquez
12 as ever working at [PBSP]." (Feb. 19, 2013 Letter from L. Padon at 1.)13 While Plaintiff may rely on service by the United States Marshal, "a plaintiff may not remain
14 silent and do nothing to effectuate such service. At a minimum, a plaintiff should request service
15 upon the appropriate defendant and attempt to remedy any apparent defects of which [he] has
16 knowledge." *Rochon v. Dawson*, 828 F.2d 1107, 1110 (5th Cir. 1987). If the marshal is unable to
17 effectuate service and the plaintiff is so informed, the plaintiff must seek to remedy the situation or
18 face dismissal of the claims regarding that defendant under Federal Rule of Civil Procedure 4(m).19 See Fed. R. Civ. P. 4(m) (providing that if service of the summons and complaint is not made upon a
20 defendant in 120 days after the filing of the complaint, the action must be dismissed without
21 prejudice as to that defendant absent a showing of "good cause"); see also *Walker v. Sumner*, 14
22 F.3d 1415, 1421-22 (9th Cir. 1994) (prisoner failed to show cause why prison official should not be
23 dismissed under Rule 4(m) because prisoner did not prove that he provided marshal with sufficient
24 information to serve official).25 No later than **twenty-eight (28) days** from the date of this Order, Plaintiff must provide the
26 Court with a current address for Defendant Vacquez. Plaintiff should review the federal discovery
27 rules, Rules 26-37 of the Federal Rules of Civil Procedure, for guidance about how to determine the
28 current address of this Defendant.

1 **If Plaintiff fails to provide the Court with the current address of Defendant Vacquez**
2 **within the twenty-eight-day deadline, all claims against this Defendant will be dismissed**
3 **without prejudice under Rule 4(m).**

4 IT IS SO ORDERED.

5 DATED: March 18, 2013


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE